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No. 92-357

In the Supreme Court of the United States

OCTOBER TERM, 1992

RUTH O. SHAW, ET AL., APPELLANTS

v.

WILLIAM BARR, ATTORNEY GENERAL, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

MOTION OF THE FEDERAL APPELLEES TO AFFIRM

KENNETH W. STARR
Solicitor General
JOHN R. DUNNE
Assistant Attorney General
JESSICA DUNSAY SILVER
THOMAS E. CHANDLER
Attorneys
Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the district court properly dismissed appellants' claims against the federal appellees for lack of jurisdiction pursuant to Section 14(b) of the Voting Rights Act of 1965, 42 U.S.C. 1973*l*(b).

2. Whether the district court properly dismissed appellants' claims against the federal appellees for failure to state a claim because appellants impermissibly sought judicial review of the Attorney General's exercise of his unreviewable enforcement discretion under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

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Pursuant to this Court's Rule 18.6, the United States moves to affirm the judgment of the district court.

OPINION BELOW

The opinion of the district court (J.S. App. 1a-60a) is unreported.

JURISDICTION

The judgment of the district court was entered on April 27, 1992. A notice of appeal (J.S. App. 64a-66a) was filed on May 27, 1992, and the jurisdictional statement was filed on August 25, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

STATEMENT

1. As a result of the 1990 Decennial Census, North Carolina became entitled to a twelfth seat in the United States House of Representatives. Accordingly, in July 1991, the North Carolina General Assembly enacted legislation to redistrict the State into twelve congressional districts. One of the proposed districts had a majority of black persons of voting age and of black persons registered to vote. J.S. App. 2a.

Because 40 of North Carolina's 100 counties are subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, the State submitted its redistricting plan to the Attorney General of the United States for preclearance.[1] On December 18, 1991, the Attorney General, acting through the Assistant Attorney General for Civil Rights, interposed a timely objection to the proposed plan. J.S. App. 3a.

In response to the Attorney General's objection, the North Carolina General Asssembly enacted a new

[1] In jurisdictions covered by Section 5, no change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect on the date the jurisdiction became covered under the Voting Rights Act may be enforced unless and until the change is declared, in a suit brought by the covered jurisdiction against the United States in the United States District Court for the District of Columbia, to be without the purpose or effect "of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. Alternatively, a covered jurisdiction may submit such change to the Attorney General of the United States for administrative review. If the latter procedure is invoked, the change may be enforced if the Attorney General "has not interposed an objection within sixty days after such submission." 42 U.S.C. 1973c.

congressional redistricting plan. That plan created a second district in which blacks constituted a majority of the voting age population. J.S. App. 4a-5a. On January 28, 1992, the State submitted that plan to the Attorney General for preclearance under Section 5. On February 6, 1992, the Attorney General advised the State that no objection would be interposed to the plan.

2. On March 12, 1992, appellants (who are five registered voters of Durham County, North Carolina) brought this action against Attorney General William Barr and Assistant Attorney General John Dunne (the federal defendants), together with various North Carolina state officials and agencies. Appellants challenged the constitutionality of the revised redistricting plan and alleged that the federal defendants' "unconstitutional interpretation and application of the Voting Rights Act" coerced the state defendants into adopting that plan. J.S. App. 69a. More specifically, appellants alleged that the federal defendants exceeded the authority granted them by the Voting Rights Act and unlawfully interpreted and enforced the Act in such a manner as to coerce the State into creating two districts with a majority of black persons and black voters without regard to "considerations of compactness, contiguous[ness], and geographic or jurisdictional communities of interest." *Id.* at 87a. Appellants sought declaratory and injunctive relief, including a declaration that the redistricting plan was unconstitutional and an injunction enjoining the federal defendants from "imposing, directly or indirectly, any preclearance requirement that any Congressional District * * * have a majority

population of persons of any particular race or color." *Id.* at 95a.[2]

A three-judge court was designated pursuant to 28 U.S.C. 2284, and both state and federal defendants filed motions to dismiss the complaint. On April 27, 1992, the court held a hearing on those motions. At that time, in light of the imminence of primary elections scheduled for May 5, 1992, the court orally announced its decision to grant the motions and entered an order of dismissal. J.S. App. 5a-6a, 61a-63a. A written opinion was issued on August 7, 1992. *Id.* at 1a-60a.

3. The district court held that, under Section 14(b) of the Voting Rights Act, 42 U.S.C. 1973*l*(b), it lacked subject matter jurisdiction over appellants' claims against the federal defendants. J.S. App. 9a-11a. Section 14(b) provides, in relevant part, that

> [n]o court other than the District Court for the District of Columbia * * * shall have jurisdiction to issue * * * any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of [this Act] or any action of any Federal officer or employee pursuant hereto.

[2] Appellants' original complaint sought only injunctive relief against the federal defendants. J.S. App. 95a-96a. After the United States filed its motion to dismiss, however, appellants amended their complaint to add, in part, a prayer for declaratory relief against the federal defendants. *Id.* at 104a-105a. Appellants sought a declaration that the federal defendants "misinterpreted and misapplied the intent and effect of the Voting Rights Act," or, in the alternative, that the Act is unconstitutional to the extent it permits or authorizes a state legislature intentionally to create congressional districts designed to contain a majority of voters of a particular race. *Id.* at 104a-105a.

The court reasoned that appellants' action was covered by Section 14(b) because it "challenges the constitutionality of the Voting Rights Act by attacking the actions of federal officials in enforcing the provisions of Section 5." J.S. App. 10a. The court further explained that appellants could not avoid the effect of Section 14(b) by amending their complaint to seek declaratory relief in addition to an injunction, because "[t]he relief prayed [for] still rests on a claim of unconstitutionality, and challenges the enforcement efforts of the Attorney General under Section 5." J.S. App. 10a. Accordingly, the court concluded that it lacked subject matter jurisdiction over appellants' claims against the federal defendants, and dismissed those claims under Fed. R. Civ. P. 12(b)(1). J.S. App. 11a.

The court also ruled in the alternative that the federal defendants were entitled to dismissal of appellants' claims under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. J.S. App. 11a-12a. Relying on this Court's decision in *Morris* v. *Gressette*, 432 U.S. 491 (1977), the district court held that the Attorney General's exercise of his discretionary authority under Section 5 is not subject to review in any court.[3]

Chief District Judge Voorhees filed an opinion concurring in part and dissenting in part. J.S. App. 26a-60a. He agreed with the majority's determination that the court lacked jurisdiction over appellants' claims against the federal defendants. *Id.* at 27a. He found it inappropriate, however, for the majority to consider the alternative ground for dismissal of those

[3] The court also addressed appellants' claims against the state defendants, and granted the state defendants' motion to dismiss. J.S. App. 12a-25a. The United States did not address those claims below.

claims under Fed. R. Civ. P. 12(b)(6); in his view, once the court had determined that it lacked subject matter jurisdiction over the claims against the federal defendants it should simply have dismissed those claims without proceeding to consider them on the merits. J.S. App. 27a-29a.[4]

ARGUMENT

The district court properly dismissed the complaint against the federal defendants for lack of subject matter jurisdiction, and, alternatively, for failure to state a judicially cognizable claim. The court's judgment follows from the plain language of Section 14(b) and from decisions of this Court interpreting the Voting Rights Act. Moreover, the decision below does not involve a substantial question under the Act and does not conflict with any decision of this Court or any other federal court. Accordingly, plenary review is not warranted, and the judgment should be summarily affirmed.

1. a. As the district court correctly recognized (J.S. App. 9a), Section 14(b) of the Voting Rights Act is a jurisdictional limitation that grants exclusive jurisdiction to the United States District Court for the District of Columbia over all claims for injunctive relief against the execution or enforcement of Section 5. As the Senate Judiciary Committee's report on the Voting Rights Act made clear, the effect of Section 14(b) is that "[a]ll challenges to the constitutionality or legality of any provision of this bill or any action taken pursuant to it must be litigated in the District

[4] Judge Voorhees also dissented in part from the majority's resolution of appellants' claims against the state defendants. J.S. App. 29a-60a.

Court for the District of Columbia." S. Rep. No. 162, 89th Cong., 1st Sess. Pt. 3, at 31 (1965). The purpose of Section 14(b) was further explained on the floor of the Senate in opposition to a proposed amendment to delete it from the Act:

> It is obvious that a great many suits unquestionably will be arising from enforcement of the act. If the pending amendment were adopted and this provision were taken out of the bill, suits could be going on in many districts within the same circuit. Different suits could be going on in different circuits. All of them would lack uniformity. It is conceivably [*sic*] that there might be different rulings in two districts of the same circuit.
>
> We felt that it would be commendable to have one court handle these matters in order to have uniformity.

111 Cong. Rec. 11,473-11,474 (1965) (remarks of Senator Tydings).

In *South Carolina* v. *Katzenbach*, 383 U.S. 301, 331-332 (1966), this Court upheld the jurisdictional limitation of Section 14(b) against the claim that it violated the due process rights of litigants required to bring suit in a distant forum. And in *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 558 (1969), the Court explained that Section 14(b) applies to actions "aimed at prohibiting enforcement of the provisions of the Voting Rights Act."[5] The lower courts have

[5] The Court in *Allen* distinguished those actions that are subject to Section 14(b) from actions brought against a State to prohibit enforcement of a state enactment that violates the Voting Rights Act. 393 U.S. at 558. In the latter context, the Court explained, the suit could be heard by any district court that otherwise had jurisdiction, because the suit was

made clear that the jurisdictional limitation of Section 14(b) extends to suits brought by private individuals. See, *e.g.*, *Reich* v. *Larson*, 695 F.2d 1147, 1149-1150 (9th Cir.) ("Section 14(b) applies to all suits, whether brought by an individual or a state, which raise constitutional challenges to the Voting Rights Act."), cert. denied, 461 U.S. 915 (1983). In short, those courts that have been presented with actions initiated to challenge the constitutionality of any portion of the Act, or to block its enforcement, have uniformly held that such claims must be brought in the United States District Court for the District of Columbia. See also *United States* v. *Ramsey*, 353 F.2d 650, 656 (5th Cir. 1965) (dictum); *Morgan* v. *Katzenbach*, 247 F. Supp. 196, 198-199 (D.D.C. 1965), rev'd on other grounds, 384 U.S. 641 (1966); *O'Keefe* v. *New York City Bd. of Elections*, 246 F. Supp. 978, 981 (S.D.N.Y. 1965); *McCann* v. *Paris*, 244 F. Supp. 870, 872-873 (W.D. Va. 1965). Appellants cite no authority to the contrary, and we are aware of none.

b. The district court correctly held that appellants' claim against the federal defendants is subject to the jurisdictional bar of Section 14(b). As the court stated, the complaint "specifically challenges the constitutionality of the Voting Rights Act by attack-

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one to enforce the Act rather than prevent its enforcement. *Ibid.* Similarly, the Court explained that declaratory judgment actions brought by private litigants to determine whether a particular state enactment was subject to Section 5 could be brought in any federal district court, whereas actions seeking a declaration that a particular state enactment actually complied with the substantive requirements of Section 5 had to be brought in the District of Columbia. 393 U.S. at 558-559.

ing the actions of federal officials in enforcing the provisions of Section 5," and "[t]he relief sought is precisely the issuance of injunctive decrees against this and comparable future acts of enforcement." J.S. App. 10a. For example, the complaint alleges that the Attorney General adopted an "unconstitutional interpretation and application of the Voting Rights Act" in objecting to North Carolina's original redistricting plan and in preclearing the State's revised plan. *Id.* at 69a. Moreover, the complaint prays for an injunction to prevent the Attorney General from enforcing Section 5 in accordance with his interpretation of the Act's requirements. *Id.* at 95a-96a. It follows that, pursuant to Section 14(b), appellants' claims against the federal defendants can be brought, if at all, only in the United States District Court for the District of Columbia.

c. Appellants contend (J.S. 40) that this action is not subject to Section 14(b) because their complaint was amended to include a prayer for declaratory relief against the federal defendants. As the district court noted, however, "[t]he relief prayed [for] still rests on a claim of unconstitutionality, and challenges the enforcement efforts of the Attorney General under Section 5." J.S. App. 10a. Permitting declaratory judgment actions of this type to proceed would defeat the central purpose of Section 14(b), which was to require that all challenges to the validity or enforcement of the Act be brought in one court. See S. Rep. No. 162, 89th Cong., 1st Sess. Pt. 3, at 31 (1965); see also *Reich* v. *Larson*, 695 F.2d at 1149 (applying Section 14(b) to claim for "declaratory and other appropriate relief"); cf. *California* v. *Grace Brethren Church*, 457 U.S. 393, 407-411 (1982) (Tax

Injunction Act, 28 U.S.C. 1341, which prohibits district courts from entering injunctions in certain circumstances, also prohibits the issuance of declaratory relief in those circumstances, because permitting such relief would defeat the central purpose of the Act). Accordingly, appellants' claims against the federal defendants were properly dismissed for lack of jurisdiction.

2. The district court also dismissed appellants' complaint because appellants sought to obtain judicial review of the Attorney General's unreviewable exercise of his enforcement discretion under Section 5. That ruling was correct, and provides an independent ground for affirming the judgment below.

a. In *Morris* v. *Gressette*, 432 U.S. 491 (1977), this Court held that the Attorney General's exercise of administrative discretion under Section 5 is not subject to judicial review in any court. The Court reasoned that Congress intended administrative preclearance of proposed voting-law changes to be a speedy alternative to the option of seeking judicial preclearance in the United States District Court for the District of Columbia. 432 U.S. at 501-505. Moreover, the Court noted that the Attorney General's exercise of his discretion under Section 5 was not conclusive with respect to the validity of submitted state laws: if the Attorney General interposed an objection to a proposed change in voting laws, the State could seek judicial relief in the District of Columbia District Court; if the Attorney General declined to interpose an objection, that fact would not bar subsequent challenges to the validity of the new law. 432 U.S. at 505-506. Accordingly, the Court concluded that "Congress intended to preclude all judicial review of the Attorney General's exercise of discretion

or failure to act" under Section 5. 432 U.S. at 507 n.24.

As the Court in *Morris* made clear, the rule prohibiting any judicial review of the Attorney General's application of Section 5 does not prevent private citizens from challenging election schemes that have received administrative preclearance. 432 U.S. at 505-507; see 42 U.S.C. 1973c ("Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object * * * shall bar a subsequent action to enjoin enforcement [of a change in voting laws]."). Thus, appellants remain free to challenge the constitutionality of North Carolina's redistricting plan in a suit against state officials, despite the fact that the plan received administrative preclearance. Appellants may not, however, obtain declaratory or injunctive relief concerning the Attorney General's prior (or future) Section 5 determinations.

Appellants' suit against the federal defendants is plainly one seeking review of the Attorney General's exercise of his enforcement discretion under Section 5. The complaint challenges the federal defendants' "interpretation, application and enforcement" of the Voting Rights Act, and seeks a judicial pronouncement that the federal defendants acted illegally in objecting to the first redistricting plan and in "coerc-[ing]" the adoption of the second redistricting plan. *E.g.*, J.S. App. 84a-86a. Accordingly, the district court properly dismissed appellants' complaint against the federal defendants for failure state a claim.[6]

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[6] The fact that appellants sought both declaratory and injunctive relief is of no consequence in this context; *Morris*

b. Appellants seek to avoid the clear mandate of *Morris* v. *Gressette* by arguing that they do not seek "to control the exercise of the Attorney General's discretion"; instead, appellants contend, they seek merely to prevent the Attorney General "from acting outside the scope of his discretion." J.S. 40. The reach of *Morris*, however, cannot be so limited. The Court made clear in that case that the Attorney General's decisions under Section 5 are insulated from all judicial review, even if he exercises his statutory discretion in a wholly lawless or arbitrary fashion. See 432 U.S. at 506-507 nn. 23, 24. Thus, appellants' attempt to evade the prohibition against judicial review announced in *Morris* cannot withstand scrutiny.

Appellants also contend (J.S. 40-41) that the Attorney General's presence as a defendant in this case is necessary in order to ensure that they can receive meaningful relief. That contention is both irrelevant and incorrect. Whatever the merit of appellants' assertion that they must obtain relief directly against the Attorney General, the simple fact is that *Morris* v. *Gressette* bars precisely the type of relief appellants seek.[7] Furthermore, it is readily apparent that the Attorney General is not an indispensable party in this action; "objection by the Attorney General is not the exclusive method of challenging changes in a State's voting laws." *Morris*, 432 U.S. at 505 n.20.

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v. *Gressette* squarely holds that "Congress intended to preclude *all* judicial review." 432 U.S. at 507 n.24 (emphasis added).

[7] To be sure, actions for declaratory relief may be brought against the United States under Section 5 to obtain judicial preclearance of proposed election-law changes, but such actions can be brought only in the United States District Court for the District of Columbia. 42 U.S.C. 1973c.

As noted above, appellants are free to challenge the constitutionality of North Carolina's revised congressional redistricting plan, and the Attorney General's failure to object to that plan is not conclusive in such an action.

Even if appellants were to succeed in their challenge to the State's plan, the absence of the Attorney General as a party would not prevent issuance of meaningful relief. A judicially drawn redistricting plan could be promulgated to remedy any constitutional violations without the need to seek Section 5 review. See *McDaniel* v. *Sanchez*, 452 U.S. 130, 138 (1981); *Connor* v. *Johnson*, 402 U.S. 690 (1971) (per curiam). Alternatively, a newly revised state plan could be submitted for administrative or judicial preclearance. 42 U.S.C. 1973c. Accordingly, appellants clearly err in contending that the Attorney General is a necessary party in this litigation.

CONCLUSION

The judgment of the district court should be summarily affirmed.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

JOHN R. DUNNE
Assistant Attorney General

JESSICA DUNSAY SILVER
THOMAS E. CHANDLER
Attorneys

OCTOBER 1992

☆ U. S. GOVERNMENT PRINTING OFFICE: 1992 342479 60073